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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONER

IN THE MATTER OF THE REVIEW AND  
POSSIBLE REVISION OF ARIZONA  
UNIVERSAL SERVICE FUND RULES,  
ARTICLE 12 OF THE ARIZONA  
ADMINISTRATIVE CODE.

Docket No. RT-00000H-97-0137

IN THE MATTER OF THE  
INVESTIGATION OF THE COST OF  
TELECOMMUNICATIONS ACCESS.

Docket No. T-00000D-00-0672

**RUCO'S NOTICE OF FILING SUPPLEMENTAL COMMENTS**

The Residential Utility Consumer Office (RUCO) hereby files notice of supplemental comments in support of its position taken at the procedural conference. At the procedural conference held on September 16, 2009, RUCO stated that the public policy issues raised by Qwest needed to be further investigated as well as considered in this docket.

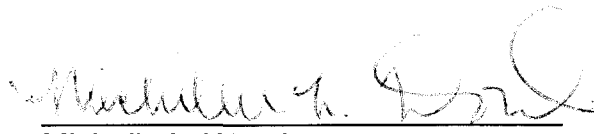
RUCO has issued data requests to all parties regarding the existence of such agreements. Although most of the parties were granted a continuance pending the outcome of the prehearing conference, two parties have responded. In response to the data request, OrbitCom acknowledged entering into such agreements with AT&T. MCImetro Access Transmission Services, LLC dba Verizon Access Transmission Services ("MCImetro" or "Verizon Business") denies the existence of any current agreement, but admits it is facing

1 similar allegations regarding access charge agreements in Colorado, California and New York  
2 and that such matters are pending. See DR Responses attached as exhibits A and B.

3 In establishing rules relating to access charges, the Commission may wish to regulate  
4 or prohibit the ability of IXC's to charge access rates below approved tariffs. To understand  
5 the public policy considerations, the Commission will need to investigate breadth and extent of  
6 such agreements. If such agreements exist, then the issue is an appropriate topic of this rule-  
7 making docket.

8 After investigation of such matters, the Commission may wish to have the Staff submit  
9 proposed rules upon which all parties may offer public comment. Thereafter, RUCO  
10 recommends the matters in dispute be heard by the Administrative Law Judge, and ultimately  
11 determined by the Commission upon recommendation of the ALJ.

12  
13 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of September, 2009.

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18 Michelle L. Wood  
19 Counsel  
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21  
22  
23  
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1 AN ORIGINAL AND FIFTEEN COPIES

of the foregoing filed this 16<sup>th</sup> day of September, 2009 with:

2 Docket Control

3 Arizona Corporation Commission

1200 West Washington

4 Phoenix, AZ 85007

5 COPIES of the foregoing emailed/

6 mailed this 16<sup>th</sup> day of September, 2009 to:

7 Jane L. Rodda, Administrative Law Judge  
Hearing Division

8 Arizona Corporation Commission

400 West Congress

9 Tucson, Arizona 85701

Jeffrey W. Crockett

Bradley S. Carroll

Snell & Wilmer, L.L.P.

One Arizona Center

Phoenix, Arizona 85004-2202

10 Janice Alward, Chief Counsel  
Legal Division

11 Arizona Corporation Commission

1200 West Washington

12 Phoenix, Arizona 85007

William J. Hayes, General Manager  
Table Top Telephone Company, Inc.

600 North Second Avenue

Ajo, Arizona 85321

13 Steven Olea, Director  
Utilities Division

14 Arizona Corporation Commission

1200 West Washington

15 Phoenix, Arizona 85007

Dennis D. Ahlers

Associate General Counsel

Eschelon Telecom, Inc.

730 Second Avenue South, Suite 900

Minneapolis, MN 55402

16 Craig A. Marks

Craig A. Marks, PLC

17 10645 N. Tatum Blvd.

Suite 200-676

18 Phoenix, Arizona 85028

Dennis D. Ahlers

Associate General Counsel

Integra Telecom, Inc.

730 Second Avenue South, Suite 900

Minneapolis, MN 55402

19 Norm Curtright

Qwest Corporation

20 20 East Thomas Road, 16<sup>th</sup> Floor

Phoenix, Arizona 85012

Michael M. Grant

Gallagher & Kennedy, P.A.

2575 East Camelback Road

Phoenix, Arizona 85016-9225

21 Reed Peterson

22 Qwest Corporation

20 East Thomas Road, 16<sup>th</sup> Floor

23 Phoenix, Arizona 85012

Dan Foley

Isabelle Salgado

AT&T Nevada

645 East Plumb Lane, B132

P. O. Box 11010

Reno, Nevada 89520

1 Gregory L. Castle  
AT&T Services, Inc.  
2 525 Market Street, Room 2022  
San Francisco, CA 94105  
3  
4 Brad VanLeur, President  
OrbitCom, Inc.  
1701 N. Louise Avenue  
5 Sioux Falls, SD 57107  
6 Thomas H. Campbell  
Michael Hallam  
7 Lewis and Roca, LLP  
40 North Central  
8 Phoenix, AZ 85004  
9 Charles H. Carrathers, III  
General Counsel, South Central Region  
10 Verizon, Inc.  
HQE03H52  
11 600 Hidden Ridge  
Irving, TX 75015-2092  
12  
13 Arizona Payphone Association  
c/o Karen E. Nally  
Law Office of Karen E. Nally, PLLC  
14 3420 E. Shea Boulevard, Suite 200  
Phoenix, Arizona 85028  
15  
16 Gary Joseph  
National Brands, Inc. dba  
Sharenet Communications  
17 4633 West Polk Street  
Phoenix, AZ 85043  
18  
19 Mark A. DiNunzio  
Cox Arizona Telcom, LLC  
1550 West Deer Valley Road  
20 MS DV3-16, Bldg. C  
Phoenix, Arizona 85027  
21  
22 Michael W. Patten  
Roshka DeWulf & Patten, PLC  
One Arizona Center  
23 400 East Van Buren, Suite 800  
Phoenix, Arizona 85004  
24

Nathan Glazier  
Regional Manager  
Alltel Communications, Inc.  
4805 E. Thistle Landing Dr.  
Phoenix, Arizona 85044

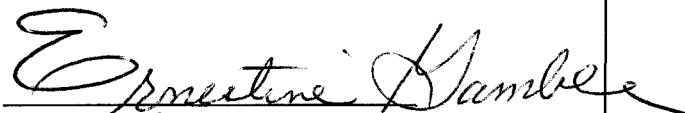
Joan S. Burke  
Osborn Maledon, PA  
2929 North Central Avenue  
Suite 2100  
Phoenix, AZ 85012

Lyndall Nipps  
Vice President, Regulatory  
Time Warner Telcom  
845 Camino Sur  
Palm Springs, CA 92262

Rex Knowles  
Executive Director – Regulatory  
XO Communications, Suite 1000  
111 E. Broadway  
Salt Lake City, UT 84111

Greg L. Rogers  
Senior Corporate Counsel  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, Colorado 80021

Paul Castaneda  
President, Local 7019  
Communication Workers of America  
2501 West Dunlap, Suite 103  
Phoenix, Arizona 85021

By   
Ernestine Gamble

## EXHIBIT A

OrbitCom Inc. Responses to RUCO's First Set of Data Requests

RE: Arizona Corporation Commission Review and Possible Revision of Arizona  
Universal Service Fund Rules and Investigation of the Cost of Telecommunications  
Access

Docket Nos. RT-00000H-97-0137 and T-00000D-00-0672

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1.01 Please provide RUCO with all data requests and responses from other parties in this matter that were served on or after July 20, 2009 forward. Please note that this is an on-going request and should be updated accordingly.

Response: None

1.02 Has the Company entered into any contracts with any IXC including, but not limited to, AT&T providing for intrastate switched access rates that are below the tariff rates on file with the Commission?

Response: OrbitCom had a previous agreement with AT&T which was effective on 01-01-2004. This Agreement was terminated by OrbitCom on 08-02-2007.

1.03 Please provide copies of all contracts entered into with AT&T for intrastate switched access service over the past two years.

Response: None

1.04 For each contract provided for in number three, please provide a copy of the tariff on file with the Commission that governs the rates charged for switched access with AT&T.

Response: N/A

1.05 Is this practice of pricing below the tariff rate widespread across the states as alleged by Qwest in their filing before the Commission requesting an investigation into this matter?

Response: The only company that has tried to force OrbitCom into agreements other than tariffed rates is AT&T. They do this by refusing to pay the tariffed rates until a smaller company such as OrbitCom is "starved" into submission. When they do this, they do it in all states.

1.06 If the Company is charging rates other than authorized by the governing tariff, please provide the legal basis for doing the same.

Response: OrbitCom strongly believes in the Filed Rate Doctrine and believes it would be improper to charge some companies less than its tariffed rates. Therefore, no company is being charged less than the tariffed rates.

- 1.07 If the Company is charging anything other than the tariff rate, is the Company extending the same rates charged in any of its intrastate switched access contracts with AT&T to other IXC's?

Response: N/A

- 1.08 Has the Company discriminated in its intrastate switched access pricing in any manner in the rates it charges IXC's? If so, explain.

Response: No, every IXC is treated and charged the exact same tariffed rates.

- 1.09 Is there an investigation regarding the same or similar allegations against the Company in any other state? If so please provide the name of the state, the body that is doing the investigation, the case or docket number, and the present status of the case. Please provide copies of any depositions, testimony, and decisions made in the investigation.

Response: No, there is not.

Dated this \_\_\_\_ day of August, 2009.

---

OrbitCom, Inc.  
By; Patrick J Mastel  
Senior Attorney  
1701 N Louise Ave.  
Sioux Falls, SD 57107

## EXHIBIT B



**BEFORE THE ARIZONA CORPORATION COMMISSION**

In The Matter of the Review and Possible Revision )  
of Arizona Universal Service Fund Rules, ) Docket Nos. RT-00000H-97-0137  
Article 12 of the Arizona Administrative Code and ) and T-00000D-00-0672  
In The Matter of the Investigation of the Cost of )  
Telecommunications Access )

**RESPONSE OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC  
d/b/a VERIZON ACCESS TRANSMISSION SERVICES  
TO RUCO'S FIRST SET OF DATA REQUESTS**

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("MCImetro" or "Verizon Business") hereby responds to the Residential Utility Consumer Office's ("RUCO") First Set of Data Requests to Arizona Competitive Local Exchange Carriers, dated July 28, 2009.

Verizon Business's responses and objections shall not be construed as a waiver of any other objection Verizon Business may have, including objections to the use of any response for any purpose, in this proceeding or any other proceeding, including but not limited to objections regarding relevance, privilege, discoverability, and/or admissibility of documents. Verizon Business expressly reserves the right, but does not undertake any obligation, to supplement or amend the objections and responses set forth below.

**GENERAL OBJECTIONS TO ALL DATA REQUESTS**

1. Verizon Business objects to each and every request to the extent it seeks information subject to the attorney-client privilege, work product doctrine or any other privilege recognized by the State of Arizona. In responding to these requests, Verizon Business does not waive, but preserves, all such privileges.

2. Verizon Business interprets RUCO's data requests to apply to Verizon Business's regulated intrastate operations in Arizona and limits its responses accordingly. To the extent that any request, definition or instruction is intended to apply to matters that take place outside the state of Arizona and that are not related to Arizona

intrastate operations subject to the jurisdiction of the Arizona Corporation Commission (“Commission”), and to the extent any request, definition or instruction seeks documents or information about services or business activities not subject to the jurisdiction of the Commission, Verizon Business objects to such request as irrelevant, overly broad, unduly burdensome, and oppressive.

3. Verizon Business objects to each and every request to the extent it requests information that is not relevant to issues and matters that the Commission has already set forth for consideration in this proceeding.

4. Verizon Business objects to each and every request as overbroad and burdensome to the extent the request is not limited in time or seeks information that is beyond the applicable statute of limitations. Verizon Business interprets RUCO’s data requests as seeking information relating to contracts entered into the past two years, as stated specifically in requests 1.03 and 1.04.

5. Verizon Business objects to each and every request to the extent that it is unreasonably burdensome, overly broad or not reasonably calculated to lead to the discovery of admissible evidence.

6. Verizon Business objects to each and every request, as well as to each definition and instruction, to the extent it purports to abrogate any of Verizon Business’s rights, or add to any of Verizon Business’s obligations under, the Arizona Rules of Civil Procedure or the Commission’s Rules.

7. Verizon Business objects to each and every request to the extent that it is overly broad, unduly burdensome and imposes any burden not expressly permitted under the Commission’s Rules or the Arizona Rules of Civil Procedure.

8. Verizon Business objects to each and every request, as well as to each definition and instruction, that seeks to obtain “each,” “all” or “any” documents to the extent such discovery is overly broad and unduly burdensome.

9. Verizon Business objects to each and every request to the extent that the information requested constitutes “trade secrets” that are privileged pursuant to the Arizona Uniform Trade Secrets Act, Ariz. Rev. Stat. § 44-401, et. seq. (2003).

10. Verizon Business objects to the requests to the extent they seek information not within Verizon’s possession, control, or custody or to the extent the requests request that Verizon Business provide information that Verizon Business does not maintain in the ordinary course of business.

11. Verizon Business objects to the requests and instructions to the extent they request the identity of a “witness” to whom questions should be directed, because no evidentiary hearings have been scheduled relating to the subject of the requests, and it is therefore, premature to identify any witness.

Verizon Business incorporates the foregoing General Objections into each response as if fully set forth therein.

**RUCO 1.01:** Please provide RUCO with all data requests and responses from other parties in this matter that were served on or after July 20, 2009 forward. Please note that this is an on-going request and should be updated accordingly.

**RESPONSE:** Verizon Business is not aware of any such data requests or responses.

**RESPONDENT:** Legal

**RUCO 1.02:** Has the Company entered into any contracts with any IXC including, but not limited to, AT&T providing for intrastate switched access rates in Arizona that are below the tariff rates on file with the Commission?

**RESPONSE:** In addition to its general objections stated above, Verizon Business objects to this request to the extent it is overbroad, is not limited in time or with reference to the applicable statute of limitations, or to contracts for intrastate service in the state of Arizona. Verizon Business further objects to the request because the term "the tariff rates" is vague and undefined. Subject to and without waiving its objections, Verizon Business responds that it has not entered into any contracts with any IXC for the purpose of providing intrastate switched access service at rates below Verizon Business's intrastate tariff rates in Arizona within the past two years, which is the time frame referenced by RUCO in data requests 1.03 and 1.04.

**RESPONDENT:** Legal, Peter Reynolds

**RUCO 1.03:** Please provide copies of all contracts entered into with AT&T for intrastate switched access service over the past two years.

**RESPONSE:** In addition to its general objections stated above, Verizon Business objects to this request to the extent it is overbroad, is not limited in time or with reference to the applicable statute of limitations, or to contracts for service in the state of Arizona. Verizon Business further objects to this request as vague because it does not identify the carrier, in addition to AT&T, that may have entered into such a contract. Subject to and without waiving its objections, Verizon Business responds: see Response to RUCO 1.02; there are no such contracts between Verizon Business and AT&T in Arizona.

**RESPONDENT:** Legal, Peter Reynolds

**RUCO 1.04:** For each contract provided for in number three, please provide a copy of the tariff on file with the Commission that governs the rates charged for switched access with AT&T.

**RESPONSE:** Not applicable.

**RESPONDENT:** Legal

**RUCO 1.05:** Is this practice of pricing below the tariff rate widespread across the states as alleged by Qwest in their filing before the Commission requesting an investigation into this matter?

**RESPONSE:** In addition to its general objections stated above, Verizon Business objects to this request because the phrase "this practice" is vague. Verizon Business further objects to this request because it seeks information about services and pricing arrangements in other states which are outside of the Commission's jurisdiction, and thus irrelevant, and because rules and regulations in different states may vary. Subject to and without waiving its objections, Verizon Business responds that it disagrees with Qwest that the Commission should open an investigation into "this matter," either as part of this proceeding or in another proceeding.

**RESPONDENT:** Legal

**RUCO 1.06:** If the Company is charging rates other than authorized by the governing tariff, please provide the legal basis for doing the same.

**RESPONSE:** In addition to its general objections stated above, Verizon Business objects to this request because it calls for a legal conclusion. Verizon Business also objects to this request because it asks about rates generally, and is thus vague and/or overbroad. Verizon Business further objects to this request because the term "governing tariff" is vague and undefined. Subject to and without waiving its objections, Verizon Business responds that, over the past two years, it has not charged rates for intrastate switched access service in Arizona different than those in its intrastate switched access tariff.

**RESPONDENT:** Legal, Peter Reynolds

**RUCO 1.07:** If the Company is charging anything other than the tariff rate, is the Company extending the same rates charged in any of its intrastate switched access contracts with AT&T to other IXC's?

**RESPONSE:** In addition to its general objections stated above, Verizon Business objects to this request because the term "the tariff rate" is vague and undefined. Verizon Business further objects to the request to the extent it is argumentative or assumes a legal conclusion (specifically, that a company must charge the same rates to other companies) that is different than the applicable legal standard, which prohibits "unreasonable discrimination." Subject to and without waiving its objections, Verizon Business responds: see response to RUCO 1.06; not applicable.

**RESPONDENT:** Legal

**RUCO 1.08:** Has the Company discriminated in its intrastate switched access pricing in any manner in the rates it charges IXCs? If so, explain.

**RESPONSE:** In addition to its general objections stated above, Verizon Business objects to this request because it calls for a legal conclusion. Verizon Business further objects to this request because the term "discriminated" is not defined, and is not the correct legal standard, which prohibits "unreasonable" discrimination. Subject to and without waiving its objections, Verizon Business responds: no.

**RESPONDENT:** Legal

**RUCO 1.09:** Is there an investigation regarding the same or similar allegations against the Company in any other state? If so please provide the name of state, the body that is doing the investigation, the case or docket number, and the present status of the case. Please provide copies of any depositions, testimony, and decisions made in the investigation.

**RESPONSE:** In addition to its general objections stated above, Verizon Business objects to this request because it seeks information about issues in other states that are outside of the Commission's jurisdiction, and are thus irrelevant, and because rules and regulations in different states may vary. Subject to and without waiving its objections, Verizon Business states that it is not the subject of any investigation into such allegations initiated by any state regulatory agency. Verizon Business states further that Qwest Communications Corporation has raised similar allegations before state public utilities

commissions in Colorado (Docket No. 08F-259T), California (Case No. 08-08-006) and New York (Case 09-C-0555), and that Verizon Business has fully answered the charges in California and Colorado, and has filed a motion to dismiss QCC's complaint in California, which is pending. QCC has filed opening testimony in the Colorado action, but the deadline for CLECs to submit testimony has not yet passed. The date for responding to the complaint in New York has not yet passed.

**RESPONDENT:** Legal